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ABSTRACT

The Department of Health, Education, and Welfare issued final regulations for implementing the Family Educational Rights and Privacy Act of 1974, as amended, which provides greater privacy safeguards to parents and students through the application of fair information practice. As a result of these HEW regulations, institutional policies and procedures must be formulated and implemented by all colleges and universities that receive federal funding under any programs for which the U.S. Commissioner of Education has administrative responsibility. This special report includes three sets of materials: (1) highlights of specific requirements in the final regulations; (2) a reproduction of a portion of the final regulations; and (3) a reproduction of the Family Educational Rights and Privacy Act of 1974, as amended. (LBH)

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Family Educational Rights and Privacy

HEW Publishes Final Rules for Implementing the "Buckley Amendment"

The Department of Health, Education, and Welfare issued in the June 17 *Federal Register* final regulations for implementing the Family Educational Rights and Privacy Act of 1974 (P. L. 93-380, §513), as amended (P. L. 93-568, §2), also known as the "Buckley Amendment." A segment of these final regulations was issued in the *Federal Register* of March 2, but this June 17 final rulemaking supersedes the earlier publication and "provides the public with a single document containing all regulatory provisions pertaining to the Family Educational Rights and Privacy Act."

The purpose of the law is to provide greater privacy safeguards to parents and students through the application of fair information practice. As a result of these HEW regulations, institutional policies and procedures must be formulated and implemented by all colleges and universities which receive federal funding under any programs for which the U.S. Commissioner of Education has administrative responsibility. Specific requirements are included that deal with the following areas: formulating institutional policies and procedures; notifying parents and students of their rights on an annual basis; requesting waivers of rights from parents and students; inspecting and reviewing education records; limiting the right to inspect and review education records; limiting the destruction of records; amending education records; assuring the right to, and conducting, a hearing; obtaining consent for the disclosure of information; maintaining records of disclosures; limiting redisclosures; ascertaining to whom disclosures may be made without consent; disclosing information to officials of other schools, and during emergencies; disclosing "directory information" (defined below); and enforcing the requirements.

HE 008 220

The regulations were issued effective immediately——June 17, 1976——but HEW formally invited comments on "the regulation and its operation, including its effect on the day-to-day activities of educational agencies and institutions during the 1976-77

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school year." Comments may be submitted for a ninety-day period commencing on July 1, 1977. HEW has stated that these comments will be used to evaluate the regulations and "shared with Congress," as may be necessary, in order to improve the effects and effectiveness of the regulations and the statute upon which they are based.

One specific issue on which HEW has invited comment is whether or not using federal funds as leverage is the most effective way to accomplish the objectives of this program. The question posed is whether there are "other more appropriate means of enforcement than institutional funds cutoff."

Please forward to the NACUBO national office copies of any comments or suggestions submitted to HEW. In addition, NACUBO would be interested in receiving copies of any institutional programs or policies formulated in order to comply with these requirements. Once gathered, certain policies and programs could be chosen as "models" for other institutions to use or adapt to their circumstances. These "model" policies and programs could be published and distributed by NACUBO or made available by other means to those who are interested. In all cases, institutional identifications would be removed from those policies and programs submitted. Please forward such documents to: G. Richard Biehl, director of information and publications, NACUBO.

CONTENTS OF THIS *SPECIAL REPORT*

This *Special Report* includes three sets of materials that may be helpful in formulating and implementing institutional policies and programs:

(1) Highlights of Specific Requirements in the Final Regulations, beginning on this page.

(2) A Reproduction of a Portion of the Final Regulations, beginning on page 15. (This reproduction includes the introductory HEW statement on these final rules and all sections of the regulations. It does not include a very lengthy set of comments and responses, in which HEW points out how it responded to comments submitted by individuals on the January 6, 1975 proposed rulemaking. Information from this comment and response section is included in the "Highlights of Requirements" portion wherever material presented in the HEW responses seemed to further clarify the requirements. This material is presented in brackets and in italics throughout the "Highlights of Requirements.")

(3) A Reproduction of the Family Educational Rights and Privacy Act of 1974, as amended, beginning on page 22. (This form of the act appeared in the January 6, 1975 *Federal Register* which included the proposed regulations.)

HIGHLIGHTS OF SPECIFIC REQUIREMENTS IN THE FINAL REGULATIONS

SUBPART A

Applicability (section 99.1): The requirements apply to all institutions to which funds are made available under any federal program for which the U.S. Commissioner of Education has administrative responsibility. They do not apply solely because students attending the institution receive benefits under such a federal program, so long as no funds under those programs are made available to the institution itself. Funds will be considered to have been made available to an institution, and hence the requirements will apply, when funds: (1) are provided by (sub)grant or (sub)contract; or (2) are provided to students attending

the institution and the funds may be paid to the institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program.

These requirements pertain to education records of students who are or have been in attendance at the institution which maintains the records.

Purpose (section 99.2): The purpose of these regulations is to set forth requirements governing the protection of privacy of parents and students under the act.

Definitions (section 99.3): "Attendance" at an institution includes, but is not limited to: (1) attendance in person and by correspondence; and (2) the period during which a person is working under a work-study program.

"Directory information" includes the following student information: student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of athletic team members, dates of attendance, degrees and awards received, most recent educational institution attended, and "other similar information."

"Disclosure" is defined as permitting access or the release, transfer, or other communication of education records of the student or the personnally identifiable information contained therein, orally, in writing, by electronic means, or by any other means to any party.

"Educational institution" means any public or private agency or institution which receives funds under any federal program under the administrative responsibility of the U.S. Commissioner of Education. The term refers to the institution as a whole, including all of its components (e.g., schools or departments in a university).

"Education records" means those records which are (1) directly related to a student, and (2) maintained by the institution or by a party acting for the institution. The term "education records" does not include:

(1) Records of instructional, supervisory, and administrative personnel and certain educational personnel which are in the sole possession of the maker thereof and are not accessible or revealed to any other individual except a substitute (with "substitute" defined as an individual who performs on a temporary basis the duties of the individual who made the record);

(2) Records of a law enforcement unit of the institution which are maintained apart from other records, maintained solely for law enforcement purposes, and not disclosed to individuals other than law enforcement officers of the same jurisdiction, so long as educational records maintained by the institution are not disclosed to the personnel of the law enforcement unit;

(3) Records relating to an individual who is employed by the institution which are made and maintained in the normal course of business, relate exclusively to the individual in his or her capacity as an employee, and are not available for use for any other purpose. (This exclusion does not apply to an individual in attendance at the institution who is employed as a result of his or her status as a student.);

(4) Records relating to an eligible student (defined below) which are: created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in a professional or paraprofessional capacity; created, maintained or used solely in connection with the provision of treatment to the student; and not disclosed to anyone other than individuals providing such treatment, so long as the records can be personally reviewed by a physician or other appropriate professional of the student's choice. "Treatment" in this context does not include remedial educational activities or activities which are a part of the program of instruction at the institution;

(5) Records of an institution which contain only information relating to a person after that person was no longer a student at the institution (e.g., information gathered on the accomplishments of alumni).

[*Information on the spiritual and psychological development of candidates for the priesthood or ministry, rabbinite, or religious orders——maintained by seminaries or schools or departments of divinity or theology which are part of a college or university——is not treated in the final regulations. Such issues may involve "complex constitutional questions" and will be considered on a case-by-case basis.*]

"Eligible student" refers to a student who has reached the age of 18 or is attending an institution of postsecondary education.

"Parent" includes a parent, a guardian, or an individual acting as a student's parent in the absence of a parent or a guardian.

"Personally identifiable" means that data or information includes (1) the name of the student, the student's parent, or other family member; (2) the student's address; (3) a personal identifier (such as a social security number or student number); or (4) a list of personal characteristics, or other information, which would make the student's identity easily traceable.

"Record" means any information or data recorded in any medium (e.g., handwriting, print, tapes, film, microfilm, microfiche).

"Student" includes any individual with respect to whom an educational institution maintains education records. The term does not include an individual who has not been in attendance at the institution. An individual who has applied for admission to, but has never been in attendance at, a component unit of an institution (e.g., a college or school within a university), even if that individual is or has been in attendance at another component unit of the institution, is not considered to be a student with respect to the component to which an admission's application has been made.

Student Rights (section 99.4): Whenever a student reaches the age of 18, or is attending an institution of postsecondary education [is an "eligible" student], the rights accorded to and the consent required of the student's parent shall thereafter only be accorded to and required of the student. A student's status as a "dependent" of his or her parents for IRS purposes does not affect the rights accorded to and consent required of an eligible student. There are no requirements which preclude an institution from according to students rights in addition to those accorded to their parents.

[*Information pertaining to an eligible student may be disclosed to the parents of such a student with the prior written consent of the eligible student or without prior written consent if the student is a "dependent" as defined under section 152 of the Internal Revenue Code of 1954.*]

Formulation of Institutional Policy and Procedures (section 99.5): Each institution shall formulate and adopt a policy (in writing with copies available on request to students' parents and eligible students) which includes:

(1) Informing parents of students and eligible students of their rights;

(2) Permitting students' parents and eligible students to inspect and review education records of the student, in accordance with section 99.11, including at least: a statement of the procedure to be followed for inspecting and reviewing education records; a description of the circumstances in which the institution feels it has a legitimate cause to deny a request for a copy of such records; a schedule of fees for copies; a listing of the types and locations of education records maintained by the institution along with the titles and addresses of officials responsible for the records;

[*The requirement to specify the names of officials maintaining education records has been deleted. The titles and addresses of such officials will be sufficient.*]

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the student's parent or the eligible student, except as permitted by sections 99.31 and 99.37. This policy shall include, at least: a statement regarding whether or not personally identifiable information will be disclosed as permitted under subsection 99.31(a)(1) and, if so, specification of the criteria for determining which parties are "school officials" and what is considered to be a "legitimate educational interest." The policy shall also specify the personally identifiable information that is to be designated as "directory information" under section 99.37;

[*A proposed rule which would have required a listing of persons who have access to education records has been deleted. It is sufficient to specify the criteria that will be used for determining who is a "school official" and what is a "legitimate educational interest."*]

(4) Maintaining the record of disclosures of personally identifiable information (see section 99.32) and permitting a parent or eligible student to inspect such record;

(5) Providing a student's parent or eligible student with an opportunity to seek the correction of a student's education record through a request to amend the records or a hearing (see Subpart C) and permitting the student's parent or eligible student to place a statement in the education record if, following hearing, the institution decides that the information in question is not inaccurate or misleading [see subsection 99.21(c)].

Annual Notification Rights (section 99.6): Institutions shall give students' parents or eligible students in attendance at the institution annual notice of their rights under the act, the institution's policy and where copies may be obtained, and the right to file complaints for alleged failures of the institution to comply with the requirements. This annual notice shall be by such means as are likely to inform students and parents.

[The requirement that an institution of postsecondary education provide notification in the language of the eligible student has been deleted.]

[Each institution is left to determine what means it will use for the notification. Some institutions may decide to provide notice on an individual basis; others may decide to publish the notification in a student handbook, school catalog, or student newspaper, or to post it on bulletin boards. The notification of rights and policy need not be provided to former students or their parents.]

Limitations on Waivers (section 99.7): A student's parent or eligible student may waive any of his or her rights under the act, valid if in writing and signed by the parent or student, as appropriate. An institution may request but may not require that students' parents or eligible students waive their rights.

Individuals who are applicants for admission or students at the institution may waive rights to inspect and review confidential letters and statements of recommendation [see subsection 99.12(a)(3)], but the waiver would apply to such confidential information only if: (1) the applicant or student is notified, upon request, of the names of all individuals providing the letters or statements; (2) the letters and statements are used only for the purpose for which they were originally intended; and (3) the waiver is not required as a condition of admission or receipt of any benefit or service of the institution. Waivers regarding the inspection of confidential letters or statements of recommendation shall be executed by the individual, regardless of age, rather than by the individual's parent.

Waivers may be made with respect to specified classes of education records and persons or institutions. A waiver may be revoked, in writing, with respect to any actions occurring after the revocation. A student may revoke any waiver executed by that student's parent once he or she becomes an eligible student.

[The requirements do not set any limit on the period of time that a waiver shall be considered to be in effect. The waiver will be considered to be in effect for as long as the letters or statements of recommendation are maintained in the education records of the student. If an eligible student waives his or her right to inspect and review a specific class of letters or statements of recommendation (e.g., with regard to employment applications), and later decides to revoke that waiver, the student would be able to inspect only those letters and statements of recommendation respecting employment which were placed in his or her records after the date the waiver was revoked. A waiver would be considered to be void if confidential statements and letters of recommendation were used for a different purpose than originally intended, and the student would have the right to inspect and review such letters and statements.]

Fee (section 99.8): Institutions may charge a fee for copies of education records made for students' parents, students, and eligible students, so long as the fee does not effectively prevent the parents and students from exercising their rights to inspect and review those records. Fees may not be charged to search for or retrieve a student's education records.

SUBPART B

Right to Inspect and Review Education Records (section 99.11): Except as provided in section 99.12, institutions shall permit a student's parent or eligible student who is or has been in attendance at the institution to inspect and review the student's education records. Requests for such inspections and reviews shall be complied with within a reasonable period of time, not to exceed 45 days. This right to inspect and review education records includes: (1) the right to a response from the institution to reasonable requests for explanations and interpretations of the records; and (2) the right to obtain copies of the records where failure to provide such copies would effectively prevent a parent or student from exercising the right to inspect and review education records.

It is presumed that either parent of a student has the right to inspect and review education records unless the institution has been provided with evidence that there is a legally binding instrument, State law or court order governing matters such as divorce, separation, or custody, which would indicate the contrary.

[Responding to a commenter who suggested that the institution has a right to have an official present whenever education records are inspected or reviewed, it was pointed out that nothing in the regulations precludes the adoption of a policy requiring the presence of an official during inspections or reviews, so long as that policy would not operate to effectively prevent the exercise of parents' or students' rights.]

Limitations on Right to Inspect and Review Education Records At the Postsecondary Level (section 99.12): The act does not require the institution to permit a student to review and inspect the following records:

(1) Financial records and statements of their parents;

(2) Confidential letters and statements of recommendation placed in the education records of a student prior to January 1, 1975, so long as (a) the letters and statements were solicited with a written assurance of confidentiality, or sent and retained with an understanding of confidentiality, and (b) the letters and statements are used only for the purpose for which they were originally intended;

(3) Confidential letters and statements of recommendation placed in the education records of a student after January 1, 1975 that deal with admission to an education institution, an application for employment, or the receipt of an honor or honorary recognition, so long as the student has waived his or her right to inspect and review such letters and statements [see subsection 99.7(c)].

Should education records contain information on more than one student, the student's parent or eligible student may inspect and review only the specific information that relates to that student.

[The right to inspect and review education records is provided to students' parents and eligible students. Applicants for admission to an institution who are unsuccessful in their application may not be considered as students for these purposes.]

Limitation on Destruction of Education Records (section 99.13): With the following exceptions, an institution is not prohibited from destroying education records: (1) Such records may not be destroyed if there is an outstanding request to inspect and review them; (2) Explanations placed in the education record by a student's parent or eligible student (see section 99.21) shall be maintained for as long as the record or contested portion thereof is maintained [see subsection 99.21(d)(1)]; (3) The record of access (see section 99.32) shall be maintained for as long as the education record to which it pertains is maintained.

[Responding to a commenter who suggested institutions be required to notify parents and students 60 days in advance of the destruction of records, it was pointed out that nothing in the regulations would preclude an institution from adopting a policy of providing such notification.]

SUBPART C

Request to Amend Education Records (section 99.20): A student's parent or an eligible student may request that the institution amend education records if they believe that information contained therein is inaccurate, misleading, or a violation of the privacy or other rights of the student. Following such requests for amendment, the institution shall decide whether or not records will be amended within a reasonable period of time. Should the institution decide to refuse to amend the record in accordance with the request, it shall inform the student's parent or eligible student of such refusal and inform the parent or student of the right to a hearing (see section 99.21).

[If the parent or student is concerned that the institution is utilizing informal attempts to reconcile differences as a delaying tactic, he or she may exercise the right to a hearing without benefit of the institution's decision regarding the request to amend.]

Right to a Hearing (section 99.21): The institution shall, on request, provide an opportunity for a hearing to challenge the content of a student's education records to insure that information contained therein is not inaccurate, misleading, or in violation of the student's privacy or other rights.

[A hearing may not be requested by a student's parent or an eligible student to contest the assignment of a grade. However, a hearing may be requested to contest whether or not an assigned grade was recorded accurately.]

Hearings shall be conducted in accordance with certain outlined procedures (see section 99.22). If, as a result of a hearing, the institution decides that the information is inaccurate, misleading, or a violation of privacy or other rights, it shall amend the records accordingly and inform, in writing, the student's parent or eligible student of such amendment. If, as a result of a hearing, the institution decides against amending the record, it shall inform the student's parent or eligible student of the right to place in the education records a statement commenting upon the information and/or setting forth any reasons for disagreement with the institution's decision.

Such statements or explanations placed in the education records by parents or students shall be maintained by the institution as a part of the student's records for as long as the record or contested portion thereof is maintained, and shall be disclosed along with the education records whenever they are disclosed by the institution to any party.

Conduct of the Hearing (section 99.22): The hearing required by section 99.21 shall be conducted according to procedures which include at least the following elements: (1) It shall be held within a reasonable period of time following the request for hearing, and the student's parent or eligible student shall be given notice of the date, place and time reasonably in advance of the hearing; (2) It may be conducted by any individual, including an official of the institution, who does not have any direct interest in the outcome; (3) The student's parent or eligible student shall have a full and fair opportunity to present evidence relevant to the issues and may be assisted or represented by individuals of his or her choice at his or her expense, including an attorney; (4) After the conclusion of the hearing, the institution shall within a reasonable period of time make its decision in writing, with the decision based solely on evidence presented at the hearing and including a summary of such evidence and the reasons behind the decision.

[Nothing would preclude the institution from employing a hearing examiner to conduct the hearing, but the decision to abide with the hearing examiner's determination must be the decision of the institution.]

[The requirement that the institution conduct the hearing and provide the decision in the primary language of the parent or student has been deleted. With the right to be assisted or represented by individuals of their choice, parents or students could be assisted by an individual qualified to serve as an interpreter. However, an institution which serves students in an area where the primary or home language is other than English is encouraged (not required) to conduct the hearing and provide the decision in the parent's or student's language whenever possible.]

SUBPART D

Prior Consent for Disclosure Required (section 99.30): The institution shall obtain written consent of the student's parent or eligible student prior to disclosing personally identifiable information, other than "directory information," from the student's education records, except as provided in section 99.31. Such consent is not required where the disclosure is to the eligible student him(her)self or to the parent of a student who is not an eligible student. Whenever written consent is required, the institution may presume that the student's parent or eligible student giving consent has the authority to do so, unless the institution has been provided with evidence that there is a legally binding instrument, State law, or court order governing matters such as divorce, separation or custody, which indicates otherwise.

The written consent for disclosure shall be signed and dated by the student's parent or eligible student giving consent, and shall include: (1) a specification of the records to be disclosed; (2) the purpose(s) of the disclosure; and (3) the party or class of parties to whom the disclosure may be made.

[The requirement to include the names of parties to whom information is to be disclosed has been deleted.]

When a disclosure is made by the institution, it shall, upon request, provid a copy of the record which is disclosed to the student's parent or the eligible student, and to a student who is not an eligible student if the student's parent so requests.

[*If an institution has been appointed the guardian of a student under applicable State law, it may exercise the rights provided to the parent of a student unless it is precluded from doing so by another federal or State law.*]

Prior Consent for Disclosure Not Required (section 99.31): Personally identifiable information from a student's education records may by disclosed by the institution without a parent's or student's written consent if the disclosure is:

(1) To other school officials, including teachers, within the institution who have been determined by the institution to have "legitimate educational interests" in the records. (Subsection 99.5(a)(3) indicates that the institution is to include in its policies and procedures a specification of the criteria to be used for determining which parties are "school officials" and what is to be considered as "legitimate educational interests.");

(2) To officials of another school or school system in which the student seeks to enroll, subject to the requirements of section 99.34;

(3) Subject to conditions set forth in section 99.35, to authorized representatives of the Comptroller General of the United States, the Secretary of HEW, the Commissioner of Education, the Director of the National Institute of Education, the Assistant Secretary for Education, or State education authorities;

(4) In connection with financial aid applied for or received by a student, so long as personally identifiable information is disclosed only as is necessary for such purposes as determining eligibility, determining the amount of financial aid, determining conditions to be imposed, or enforcing the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(6) To organizations conducting studies for, or on behalf of, educational institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, so long as such studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization, and the information will be destroyed when no longer needed for the purposes for which the study was conducted;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a "dependent" student," as defined in section 152 of the Internal Revenue Code;

[*The act permits, but does not require, an institution to disclose information from the records of an eligible student to a parent if the eligible student is a dependent as defined by the Internal Revenue Service. Should an institution*

decide to adopt a policy of disclosing information to parents of dependent eligible students, it will need to establish a procedure for determining whether or not eligible students are dependents, in the IRS sense. Institutions may decide to ask eligible students at registration whether or not they are dependents of their parents; others may decide to require that parents submit affidavits stating that eligible students are dependents for income tax purposes. No particular procedure is required by these regulations.]

(9) To comply with a judicial order or lawfully issued subpeona, so long as the institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpeona in advance of compliance therewith;

(10) To appropriate parties in a health or safety emergency subject to conditions set forth in section 99.36.

[In response to commenters seeking clarification as to whether or not the institution is required to disclose information in cases where the information can be disclosed without written consent of a parent or student, it is pointed out that nothing in the regulations requires or precludes disclosure of any personally identifiable information from the education records of a student. Section 99.31 states that information may be disclosed to those parties listed therein.]

Record of Disclosures Required to be Maintained (section 99.32): An institution shall maintain a record, kept with the student's education records, of each request for and disclosure of personally identifiable information. Such record shall indicate the parties who have requested or obtained the information and the legitimate interests these parties had in requesting or obtaining the information. These requirements that disclosures shall be recorded do not apply to disclosures to a student's parent or eligible student, to disclosures pursuant to a written consent of a parent or student when the consent is specific with respect to the party(ies) to whom disclosure is to be made, to disclosures to school officials under section 99.31, or to disclosures of directory information under section 99.37.

The record of disclosures may be inspected by a student's parent or eligible student, by the school official and his or her assistants responsible for the custody of records, and for the purpose of auditing the recordkeeping procedures of the institution by parties so authorized to do so as set forth in subsections 99.31(a)(1) and (3).

[The record of disclosures is considered to be a part of the education records of a student, and must therefore be retained as long as the education records to which it refers is maintained by the institution.]

Limitation on Redisclosure (section 99.33]: The institution may disclose personally identifiable information from a student's education records only on the condition that the party to whom the information is disclosed will not disclose the information without prior written consent of the student's parent or eligible student, except that such information may be used by the officers, employees and agents of the organization to which the information was disclosed for the purposes for which disclosure was made. This requirement does not preclude an institution from disclosing such information under section 99.31 with the understanding that the information will

be redisclosed to other parties under that section so long as the recordkeeping requirements of section 99.32 are met with respect to each of those parties.

[The statutory requirement that information not be released to a third party except on the condition that it not be redisclosed without written consent was not operative until the effective date of the act, November 19, 1974. This condition cannot, therefore, be imposed with respect to information released prior to that date.]

Except for the disclosure of directory information (see section 99.37), the institution shall inform the party to whom a disclosure is made of this limitation on redisclosure.

[Nothing in these regulations would preclude an institution from adopting a policy whereby written assurances regarding redisclosure would be required from third parties to whom information is disclosed.]

Conditions for Disclosure to Officials of Other Schools and School Systems (section 99.34): An institution which is transferring a student's education records pursuant to section 99.31 shall: (1) Make a reasonable attempt to notify the student's parent or the eligible student of the records transfer, except for when the transfer is initiated at the sending institution by the student's parent or eligible student, or when the institution's policies and procedures (see section 99.5) include a notice that states that the institution forwards education records on request to a school in which a student seeks or intends to enroll; (2) Provide the student's parent or eligible student, upon request, with a copy of the education records transferred; and (3) Provide the student's parent or eligible student with an opportunity for a hearing under Subpart C.

If a student is enrolled in, or receives services from, more than one school, such schools may disclose information from the student's education records to each other without obtaining a written consent, so long as the disclosure meets the requirements of the section outlined above.

[A "reasonable attempt to notify" may be a letter to the last known address of the parent or student, with no acknowledgement of receipt required.]

Disclosure to Certain Federal and State Officials for Federal Program Purposes (section 99.35): Nothing in the act or these regulations precludes authorized representatives listed in subsection 99.31(a)(3) from having access to student or other records necessary in connection with the audit and evaluation of federally supported programs, or in connection with the enforcement of or compliance with federal legal requirements relating to such programs. Except when a student's parent or eligible student has consented, or when the collection of information is specifically authorized by federal law, any data collected by federal officials listed in subsection 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials. Such data shall be destroyed when it is no longer needed for the purposes for which it was gathered.

Conditions for Disclosure in Health and Safety Emergencies (section 99.36): The institution may disclose personally identifiable information from a student's education

records to appropriate parties in connection with an emergency, if knowledge of the information is necessary to protect the health and safety of the student or others. Factors to be taken into account in this regard include: (1) the seriousness of the threat to health and safety; (2) the need for the information to meet the emergency; (3) whether or not the parties to whom the information is disclosed are in a position to deal with the emergency; and (4) the extent to which time is of the essence.

Conditions for Disclosure of Directory Information (section 99.37): The institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution if that information has been designated as "directory information" (defined in section 99.3) under the procedures outlined below. With regard to students no longer in attendance at the institution, directory information may be disclosed and the procedures outlined below need not be followed.

The procedures to be followed for an institution which wishes to designate directory information include giving public notice of: (1) the categories of personally identifiable information which the institution has designated as directory information; the right of a student's parent or eligible student to refuse to permit the inclusion as directory information of any or all of the categories of personally identifiable information included in the institution's designation; the period of time within which the student's parent or eligible student must inform the institution, in writing, that such information is not to be designated as directory information with respect to that student.

[The actual means of "giving public notice" may be determined by each institution. Institutions may, for example, publish the notice and an explanation of it in the student newspaper; or, copies may be made available at various department and administrative offices.]

[Following the above procedures would allow an institution to disclose directory information to any member of the public. Nothing in the regulations, however, precludes the adoption of a more restrictive policy regarding disclosure of directory information.]

SUBPART E

Office and Review Board (section 99.60): The secretary of HEW is required to designate an office and a review board which will investigate, process, and review violations and complaints which may be filed concerning alleged violations of the act and these regulations. The review board will adjudicate cases which are referred to it by the office. The office is located at: The Family Educational Rights and Privacy Act Office (FERPA), Department of HEW, 330 Independence Avenue, S.W., Washington, D. C. 20201.

[The requirement that each institution submit an assurance that it is in compliance has been deleted, primarily to reduce paperwork. Also deleted is the requirement regarding assurances for subgrants and subcontracts.]

Conflict with State or Local Laws (section 99.61): An institution which determines that it cannot comply with the requirements due to a conflicting State or local law shall so advise the FERPA office within 45 days of such a determination, providing the text and legal citation of the conflicting law.

Reports and Records (section 99.62): Each institution shall submit reports in the form and containing such information as the FERPA office may require to carry out

its functions, and shall keep records and make such available to the FERPA office as it may find necessary.

Complaint Procedure (section 99.63): Complaints regarding violations of parents' or students' rights shall be submitted to the FERPA office in writing. The office will notify, in writing, each complainant and the institution against which the violation has been alleged that the complaint has been received. The substance of the alleged violation shall be included in the notification to the institution, and the institution shall have an opportunity to submit a written response.

The FERPA office will investigate all timely complaints received, and may permit further written or oral submissions by both parties. Following its investigation, the office will provide the complainant and the institution with written notification of its findings, and the basis for such. If the office finds that there has been a failure to comply with the requirements, it will include in its notification to the institution specific steps that shall be taken to assure compliance. The notification shall also include a reasonable period of time during which such specific steps should be voluntarily taken by the institution. Should the institution fail to comply during this period of time, the matter would be referred to the FERPA review board for a hearing under section 99.64 through section 99.67.

Termination of Funding (section 99.64): If the secretary of HEW, following reasonable notice and opportunity for a hearing by the review board, finds that an institution has failed to comply and determines that compliance cannot be secured by voluntary means, the secretary shall issue a decision, in writing, that no funds under any federal program referenced in subsection 99.1(a) shall be made available to the institution until there is no longer any failure to comply.

Hearing Procedures, Hearing Before Panel or a Hearing Officer, Initial Decision and Final Decision (sections 99.65, 99.66, and 99.67): These three sections include detailed information regarding procedures to be followed for the hearing and decisions reached on the basis of information presented at the hearing.

Title 45—Public Welfare

SUBTITLE A—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, GENERAL ADMINISTRATION

PART 99—PRIVACY RIGHTS OF PARENTS AND STUDENTS

Final Rule on Education Records

Notice of proposed rulemaking was published in the FEDERAL REGISTER on January 6, 1975 at 40 FR 1208 setting forth the requirements to be met by an educational agency or institution to protect the privacy of parents and students under section 438 of the General Education Provisions Act, as amended (added by section 513 of Pub. L. 93-380 and amended by section 2 of Pub. L. 93-568).

Three hundred and twenty-one letters of comment were received during the 60-day public comment period which closed on March 7, 1975. All comments were given consideration during the revision of the regulations, the first segment of which was published in final form on March 2, 1976 at 41 FR 9026. This document supersedes the previously published final regulation. The revoked regulation has been incorporated for republication at subparts A (Sections 99.2 and .3), C (Sections 99.21-23), and D (Sections 99.31 and .36) of this document, in order to provide the public with a single document containing all regulatory provisions pertaining to the Family Educational Rights and Privacy Act.

While the Department unquestionably supports the purpose of the law—to provide greater privacy safeguards to parents and students through the application of fair information practice—during the course of developing this final regulation it became evident that translating this intent into practice might create a number of problems. For our part, there was a conscious effort to mitigate any dislocating effects which the regulation might have and, at the same time, remain consistent with the statute.

We believe that some working experience with this regulation will be helpful to the Department in determining whether there is a need to modify this regulation or whether a recommendation for legislative change may be either necessary or appropriate.

As a result, the regulation is being issued in final form, effective upon publication, with the commitment that comments on the regulation and its operation, including its effect on the day-to-day activities of educational agencies and institutions during the 1976-77 school year, will be formally invited for a ninety-day period commencing July 1, 1977. These comments will be used in evaluating this regulation and will be shared with the Congress, as may be necessary, in order to improve the effects and effectiveness of the regulation and the statute upon which it is based.

In addition to welcoming comments on the substance of these regulations, the Department will also solicit public comment regarding the most appropriate means of enforcing the provisions of the Act. Regarding the means of enforcement available to the Department, while educational agencies and institutions are accountable for Federal funds they receive and must act in conformity with Federal law, the practice of using the expenditure of Federal funds as leverage may not be the most effective way to accomplish the objectives of this statute. We would be interested in your views as to whether other more appropriate means of enforcement than institutional funds cutoff are or should be available.

* * * * *

Effective date. These regulations shall be effective on June 17, 1976.

Dated: June 8, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

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AUTHORITY: Sec. 438, Pub. L. 90-247, Title IV, as amended, 88 Stat. 571-574 (20 U.S.C. 1232g) unless otherwise noted.

Subpart A—General

§ 99.1 Applicability of part.

(a) This part applies to all educational agencies or institutions to which funds are made available under any Federal [program for which the U.S. Commissioner of Education has administrative responsibility, as specified by law or by delegation of authority pursuant to law.]

(20 U.S.C. 1230, 1232g)

(b) This part does not apply to an educational agency or institution solely because students attending that nonmonetary agency or institution receive benefits under one or more of the Federal programs referenced in paragraph (a) of this section, if no funds under those programs are made available to the agency or institution itself.

(c) For the purposes of this part, funds will be considered to have been made available to an agency or institution when funds under one or more of the programs referenced in paragraph (a) of this section: (1) Are provided to the agency or institution by grant, contract, subgrant, or subcontract, or (2) are provided to students attending the agency or institution and the funds may be paid to the agency or institution by those students for educational purposes, such as under the Basic Educational Opportunity Grants Program and the Guaranteed Student Loan Program (Titles IV–A–1 and IV–B, respectively, of the Higher Education Act of 1965, as amended).

(20 U.S.C. 1232g)

(d) Except as otherwise specifically provided, this part applies to education records of students who are or have been in attendance at the educational agency or institution which maintains the records.

(20 U.S.C. 1232g)

§ 99.2 Purpose.

The purpose of this part is to set forth requirements governing the protection of privacy of parents and students under section 438 of the General Education Provisions Act, as amended.

(20 U.S.C. 1232g)

§ 99.3 Definitions.

As used in this Part:

"Act" means the General Education Provisions Act, Title IV of Pub. L. 90-247, as amended.

"Attendance" at an agency or institution includes, but is not limited to: (a) attendance in person and by correspondence, and (b) the period during which a person is working under a work-study program.

"Commissioner" means the U.S. Commissioner of Education.

(20 U.S.C. 1232g)

"Directory information" includes the following information relating to a student: the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, the most recent previous educational agency or institution attended by the student, and other similar information.

(20 U.S.C. 1232g(a)(5)(A))

"Disclosure" means permitting access or the release, transfer, or other communication of education records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

(20 U.S.C. 1232g(b)(1))

"Educational institution" or "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any Federal program referenced in § 99.1(a). The term refers to the agency or institution recipient as a whole, including all of its components (such as schools or departments in a university) and shall not be read to refer to one or more of these components separate from that agency or institution.

(20 U.S.C. 1232g(a)(5))

"Education records" (a) means those records which: (1) Are directly related to a student, and (2) are maintained by an educational agency or institution or by a party acting for the agency or institution.

(b) The term does not include:

(1) Records of instructional, supervisory, and administrative personnel and educational personnel ancillary thereto which:

(i) Are in the sole possession of the maker thereof, and

(ii) Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means an individual who performs on a temporary basis the duties of the individual who made the record, and does not refer to an individual who permanently succeeds the maker of the record in his or her position.

(2) Records of a law enforcement unit of an educational agency or institution which are:

(i) Maintained apart from the records described in paragraph (a) of this definition;

(ii) Maintained solely for law enforcement purposes, and

(iii) Not disclosed to individuals other than law enforcement officials of the same jurisdiction; *Provided*, That education records maintained by the educational agency or institution are not disclosed to the personnel of the law enforcement unit.

(3) (i) Records relating to an individual who is employed by an educational agency or institution which:

(A) Are made and maintained in the normal course of business;

(B) Relate exclusively to the individual in that individual's capacity as an employee, and

(C) Are not available for use for any other purpose.

(ii) This paragraph does not apply to records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student.

(4) Records relating to an eligible student which are:

(i) Created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional or paraprofessional capacity, or assisting in that capacity;

(ii) Created, maintained, or used only in connection with the provision of treatment to the student, and

(iii) Not disclosed to anyone other than individuals providing the treatment; *Provided*, That the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are part of the program of instruction at the educational agency or institution.

(5) Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected by an educational agency or institution pertaining to the accomplishments of its alumni.

(20 U.S.C. 1232g(a)(4))

"Eligible student" means a student who has attained eighteen years of age, or is attending an institution of postsecondary education.

(20 U.S.C. 1232g(d))

"Financial Aid", as used in § 99.31(a)(4), means a payment of funds provided to an individual (or a payment in kind of tangible or intangible property to the individual) which is conditioned on the individual's attendance at an educational agency or institution.

(20 U.S.C. 1232g(b)(1)(D))

"Institution of postsecondary education" means an institution which provides education to students beyond the secondary school level; "secondary school level" means the educational level (not beyond grade 12) at which secondary education is provided, as determined under State law.

(20 U.S.C. 1232g(d))

"Panel" means the body which will adjudicate cases under procedures set forth in §§ 99.65–99.67.

"Parent" includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Act unless the agency or institution has been provided with evidence that there is a State law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

"Party" means an individual, agency, institution or organization.

(20 U.S.C. 1232g(b)(4)(A))

"Personally identifiable" means that the data or information includes (a) the name of a student, the student's parent, or other family member, (b) the address of the student, (c) a personal identifier, such as the student's social security number or student number, (d) a list of personal characteristics which would make the student's identity easily traceable, or (e) other information which would make the student's identity easily traceable.

(20 U.S.C. 1232g)

"Record" means any information or data recorded in any medium, including, but not limited to: handwriting, print, tapes, film, microfilm, and microfiche.

(20 U.S.C. 1232g)

"Secretary" means the Secretary of the U.S. Department of Health, Education, and Welfare.

(20 U.S.C. 1232g)

"Student" (a) includes any individual with respect to whom an educational agency or institution maintains education records.

(b) The term does not include an individual who has not been in attendance at an educational agency or institution. A person who has applied for admission to, but has never been in attendance at a component unit of an institution of postsecondary education (such as the various colleges or schools which comprise a university), even if that individual is or has been in attendance at another component unit of that institution of postsecondary education, is not considered to be a student with respect to the component to which an application for admission has been made.

(20 U.S.C. 1232g(a)(5))

§ 99.4 Student rights.

(a) For the purposes of this part, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education, the rights accorded to and the consent required of the parent of the student shall thereafter only be accorded to and required of the eligible student.

(b) The status of an eligible student as a dependent of his or her parents for the purposes of § 99.31(a)(8) does not otherwise affect the rights accorded to and the consent required of the eligible student by paragraph (a) of this section.

(20 U.S.C. 1232g(d))

(c) Section 438 of the Act and the regulations in this part shall not be construed to preclude educational agencies or institutions from according to students rights in addition to those accorded to parents of students.

§ 99.5 Formulation of institutional policy and procedures.

(a) Each educational agency or institution shall, consistent with the minimum requirements of section 438 of the Act and this part, formulate and adopt a policy of—

(1) Informing parents of students or eligible students of their rights under § 99.6;

(2) Permitting parents of students or eligible students to inspect and review the education records of the student in accordance with § 99.11, including at least:

(i) A statement of the procedure to be followed by a parent or an eligible student who requests to inspect and review the education records of the student;

(ii) With an understanding that it may not deny access to an education record, a description of the circumstances in which the agency or institution feels it has a legitimate cause to deny a request for a copy of such records;

(iii) A schedule of fees for copies, and

(iv) A listing of the types and locations of education records maintained by the educational agency or institution and the titles and addresses of the officials responsible for those records;

(3) Not disclosing personally identifiable information from the education records of a student without the prior written consent of the parent of the student or the eligible student, except as otherwise permitted by §§ 99.31 and 99.37; the policy shall include, at least: (i) A statement as to whether the educational agency or institution will disclose personally identifiable information from the education records of a student under § 99.31(a)(1) and, if so, a specification of the criteria for determining which parties are "school officials" and what the educational agency or institution considers to be a "legitimate educational interest", and (ii) a specification of the personally identifiable information to be designated as directory information under § 99.37;

(4) Maintaining the record of disclosures of personally identifiable information from the education records of a student required to be maintained by § 99.32, and permitting a parent or an eligible student to inspect that record;

(5) Providing a parent of the student or an eligible student with an opportunity to seek the correction of education records of the student through a request to amend the records or a hearing under Subpart C, and permitting the parent of a student or an eligible student to place a statement in the education records of the student as provided in § 99.21(c);

(b) The policy required to be adopted by paragraph (a) of this section shall be in writing and copies shall be made available upon request to parents of students and to eligible students.

[20 U.S.C. 1232g (e) and (f)]

§ 99.6 Annual notification of rights.

(a) Each educational agency or institution shall give parents of students in attendance or eligible students in attendance at the agency or institution

annual notice by such means as are reasonably likely to inform them of the following:

(1) Their rights under section 438 of the Act, the regulations in this part, and the policy adopted under § 99.5; the notice shall also inform parents of students or eligible students of the locations where copies of the policy may be obtained; and

(2) The right to file complaints under § 99.63 concerning alleged failures by the educational agency or institution to comply with the requirements of section 438 of the Act and this part.

(b) Agencies and institutions of elementary and secondary education shall provide for the need to effectively notify parents of students identified as having a primary or home language other than English.

[20 U.S.C. 1232g(e)]

§ 99.7 Limitations on waivers.

(a) Subject to the limitations in this section and § 99.12, a parent of a student or a student may waive any of his or her rights under section 438 of the Act or this part. A waiver shall not be valid unless in writing and signed by the parent or student, as appropriate.

(b) An educational agency or institution may not require that a parent of a student or student waive his or her rights under section 438 of the Act or this part. This paragraph does not preclude an educational agency or institution from requesting such a waiver.

(c) An individual who is an applicant for admission to an institution of postsecondary education or is a student in attendance at an institution of postsecondary education may waive his or her right to inspect and review confidential letters and confidential statements of recommendation described in § 99.12(a) (3) except that the waiver may apply to confidential letters and statements only if: (1) The applicant or student is, upon request, notified of the names of all individuals providing the letters or statements; (2) the letters or statements are used only for the purpose for which they were originally intended, and (3) such waiver is not required by the agency or institution as a condition of admission to or receipt of any other service or benefit from the agency or institution.

(d) All waivers under paragraph (c) of this section must be executed by the individual, regardless of age, rather than by the parent of the individual.

(e) A waiver under this section may be made with respect to specified classes of: (1) Education records, and (2) persons or institutions.

(f) (1) A waiver under this section may be revoked with respect to any actions occurring after the revocation.

(2) A revocation under this paragraph must be in writing.

(3) If a parent of a student executes a waiver under this section, that waiver may be revoked by the student at any time after he or she becomes an eligible student.

[20 U.S.C. 1232g(a)(1) (B) and (C)]

§ 99.8 Fees.

(a) An educational agency or institution may charge a fee for copies of education records which are made for the parents of students, students, and eligible students under section 438 of the Act and this part; *Provided*, That the fee does not effectively prevent the parents and students from exercising their right to inspect and review those records.

(b) An educational agency or institution may not charge a fee to search for or to retrieve the education records of a student.

[20 U.S.C. 1232g(a)(1)]

Subpart B—Inspection and Review of Education Records

§ 99.11 Right to inspect and review education records.

(a) Each educational agency or institution, except as may be provided by § 99.12, shall permit the parent of a student or an eligible student who is or has been in attendance at the agency or institution, to inspect and review the education records of the student. The agency or institution shall comply with a request within a reasonable period of time, but in no case more than 45 days after the request has been made.

(b) The right to inspect and review education records under paragraph (a) of this section includes:

(1) The right to a response from the educational agency or institution to reasonable requests for explanations and interpretations of the records; and

(2) The right to obtain copies of the records from the educational agency or institution where failure of the agency or institution to provide the copies would effectively prevent a parent or eligible student from exercising the right to inspect and review the education records.

(c) An educational agency or institution may presume that either parent of the student has authority to inspect and review the education records of the student unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

§ 99.12 Limitations on right to inspect and review education records at the postsecondary level.

(a) An institution of postsecondary education is not required by section 438 of the Act or this part to permit a student to inspect and review the following records:

(1) Financial records and statements of their parents or any information contained therein;

(2) Confidential letters and confidential statements of recommendation which were placed in the education records of a student prior to January 1, 1975; *Provided*, That:

(i) The letters and statements were solicited with a written assurance of confidentiality, or sent and retained with a documented understanding of confidentiality, and

(ii) The letters and statements are used only for the purposes for which they were specifically intended;

(3) Confidential letters of recommendation and confidential statements of recommendation which were placed in the education records of the student after January 1, 1975:

(i) Respecting admission to an educational institution;

(ii) Respecting an application for employment, or

(iii) Respecting the receipt of an honor or honorary recognition; *Provided*, That the student has waived his or her right to inspect and review those letters and statements of recommendation under § 99.7(c).

(20 U.S.C. 1232g(a)(1)(B))

(b) If the education records of a student contain information on more than one student, the parent of the student or the eligible student may inspect and review or be informed of only the specific information which pertains to that student.

(20 U.S.C. 1232g(a)(1)(A))

§ 99.13 Limitation on destruction of education records.

An educational agency or institution is not precluded by section 438 of the Act or this part from destroying education records, subject to the following exceptions:

(a) The agency or institution may not destroy any education records if there is an outstanding request to inspect and review them under § 99.11;

(b) Explanations placed in the education record under § 99.21 shall be maintained as provided in § 99.21(d), and

(c) The record of access required under § 99.32 shall be maintained for as long as the education record to which it pertains is maintained.

(20 U.S.C. 1232g(f))

Subpart C—Amendment of Education Records

§ 99.20 Request to amend education records.

(a) The parent of a student or an eligible student who believes that information contained in the education records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request that the educational agency or institution which maintains the records amend them.

(b) The educational agency or institution shall decide whether to amend the education records of the student in accordance with the request within a reasonable period of time of receipt of the request.

(c) If the educational agency or institution decides to refuse to amend the education records of the student in accordance with the request it shall so inform the parent of the student or the eligible student of the refusal, and advise the parent or the eligible student of the right to a hearing under § 99.21.

[20 U.S.C. 1232g(a)(2)]

§ 99.21 Right to a hearing.

(a) An educational agency or institution shall, on request, provide an opportunity for a hearing in order to challenge the content of a student's education records to insure that information in the education records of the student is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students. The hearing shall be conducted in accordance with § 99.22.

(b) If, as a result of the hearing, the educational agency or institution decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall amend the education records of the student accordingly and so inform the parent of the student or the eligible student in writing.

(c) If, as a result of the hearing, the educational agency or institution decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of students, it shall inform the parent or eligible student of the right to place in the education records of the student a statement commenting upon the information in the education records and/or setting forth any reasons for disagreeing with the decision of the agency or institution.

(d) Any explanation placed in the education records of the student under paragraph (c) of this section shall:

(1) Be maintained by the educational agency or institution as part of the education records of the student as long as the record or contested portion thereof is maintained by the agency or institution, and

(2) If the education records of the student or the contested portion thereof is disclosed by the educational agency or institution to any party, the explanation shall also be disclosed to that party.

[20 U.S.C. 1232g(a)(2)]

§ 99.22 Conduct of the hearing.

The hearing required to be held by § 99.21(a) shall be conducted according to procedures which shall include at least the following elements:

(a) The hearing shall be held within a reasonable period of time after the educational agency or institution has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the hearing;

(b) The hearing may be conducted by any party, including an official of the educational agency or institution, who does not have a direct interest in the outcome of the hearing;

(c) The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised under § 99.21, and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney;

(d) The educational agency or institution shall make its decision in writing within a reasonable period of time after the conclusion of the hearing; and

(e) The decision of the agency or institution shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision.

[20 U.S.C. 1232g(a)(2)]

Subpart D—Disclosure of Personally Identifiable Information From Education Records

§ 99.30 Prior consent for disclosure required.

(a)(1) An educational agency or institution shall obtain the written consent of the parent of a student or the eligible student before disclosing personally identifiable information from the education records of a student, other than directory information, except as provided in § 99.31.

(2) Consent is not required under this section where the disclosure is to (i) the parent of a student who is not an eligible student, or (ii) the student himself or herself.

(b) Whenever written consent is required, an educational agency or institution may presume that the parent of the student or the eligible student giving consent has the authority to do so unless the agency or institution has been provided with evidence that there is a legally binding instrument, or a State law or court order governing such matters as divorce, separation or custody, which provides to the contrary.

(c) The written consent required by paragraph (a) of this section must be signed and dated by the parent of the student or the eligible student giving the consent and shall include:

(1) A specification of the records to be disclosed,

(2) The purpose or purposes of the disclosure, and

(3) The party or class of parties to whom the disclosure may be made.

(d) When a disclosure is made pursuant to paragraph (a) of this section, the educational agency or institution shall, upon request, provide a copy of the record which is disclosed to the parent of the student or the eligible student, and to the student who is not an eligible student if so requested by the student's parents.

[20 U.S.C. 1232g(b)(1) and (b)(2)(A)]

§ 99.31 Prior consent for disclosure not required.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student without the written consent of the parent of the student or the eligible student if the disclosure is—

(1) To other school officials, including teachers, within the educational institution or local educational agency who have been determined by the agency or institution to have legitimate educational interests;

(2) To officials of another school or school system in which the student seeks or intends to enroll, subject to the requirements set forth in § 99.34;

(3) Subject to the conditions set forth in § 99.35, to authorized representatives of:

(i) The Comptroller General of the United States,

(ii) The Secretary,

(iii) The Commissioner, the Director of the National Institute of Education, or the Assistant Secretary for Education, or

(iv) State educational authorities;

(4) In connection with financial aid for which a student has applied or which a student has received; *Provided*, That personally identifiable information from the education records of the student may be disclosed only as may be necessary for such purposes as:

(i) To determine the eligibility of the student for financial aid,

(ii) To determine the amount of the financial aid,

(iii) To determine the conditions which will be imposed regarding the financial aid, or

(iv) To enforce the terms or conditions of the financial aid;

(5) To State and local officials or authorities to whom information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974. This subparagraph applies only to statutes which require that specific information be disclosed to State or local officials and does not apply to statutes which permit but do not require disclosure. Nothing in this paragraph shall prevent a State from further limiting the number or type of State or local officials to whom disclosures are made under this subparagraph;

(6) To organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction; *Provided*, That the studies are conducted in a manner which will not permit the personal identification of students and their parents by individuals other than representatives of the organization and the information will be destroyed when no longer needed for the purposes for which the study was conducted; the term "organizations" includes, but is not limited to, Federal, State and local agencies, and independent organizations;

(7) To accrediting organizations in order to carry out their accrediting functions;

(8) To parents of a dependent student, as defined in section 152 of the Internal Revenue Code of 1954;

(9) To comply with a judicial order or lawfully issued subpoena; *Provided*, That the educational agency or institution makes a reasonable effort to notify the parent of the student or the eligible student of the order or subpoena in advance of compliance therewith; and

(10) To appropriate parties in a health or safety emergency subject to the conditions set forth in § 99.36.

(b) This section shall not be construed to require or preclude disclosure of any personally identifiable information from the education records of a student by an educational agency or institution to the parties set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)]

§ 99.32 Record of disclosures required to be maintained.

(a) An educational agency or institution shall for each request for and each disclosure of personally identifiable information from the education records of a student, maintain a record kept with the education records of the student which indicates:

(1) The parties who have requested or obtained personally identifiable information from the education records of the student, and

(2) The legitimate interests these parties had in requesting or obtaining the information.

(b) Paragraph (a) of this section does not apply to disclosures to a parent of a student or an eligible student, disclosures pursuant to the written consent of a parent of a student or an eligible student when the consent is specific with respect to the party or parties to whom the disclosure is to be made, disclosures to school officials under § 99.31(a)(1), or to disclosures of directory information under § 99.37.

(c) The record of disclosures may be inspected:

(1) By the parent of the student or the eligible student,

(2) By the school official and his or her assistants who are responsible for the custody of the records, and

(3) For the purpose of auditing the recordkeeping procedures of the educational agency or institution, the parties authorized in, and under the conditions set forth in § 99.31(a)(1) and (3).

(20 U.S.C. 1232g(b)(4)(A))

§ 99.33 Limitation on redisclosure.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student only on the condition that the party to whom the information is disclosed will not disclose the information to any other party without the prior written consent of the parent of the student or the eligible student, except that the personally identifiable information which is disclosed to an institution, agency or organization may be used by its officers, employees and agents, but only for the purposes for which the disclosure was made.

(b) Paragraph (a) of this section does not preclude an agency or institution from disclosing personally identifiable information under § 99.31 with the understanding that the information will be redisclosed to other parties under that section; *Provided*, That the recordkeeping requirements of § 99.32 are met with respect to each of those parties.

(c) An educational agency or institution shall, except for the disclosure of directory information under § 99.37, inform the party to whom a disclosure is made of the requirement set forth in paragraph (a) of this section.

[20 U.S.C. 1232g(b)(4)(B)]

§ 99.34 Conditions for disclosure to officials of other schools and school systems.

(a) An educational agency or institution transferring the education records of a student pursuant to § 99.31(a)(2) shall:

(1) Make a reasonable attempt to notify the parent of the student or the eligible student of the transfer of the records at the last known address of the parent or eligible student, except:

(i) When the transfer of the records is initiated by the parent or eligible student at the sending agency or institution, or

(ii) When the agency or institution includes a notice in its policies and procedures formulated under § 99.5 that it forwards education records on request to a school in which a student seeks or intends to enroll; the agency or institution does not have to provide any further notice of the transfer;

(2) Provide the parent of the student or the eligible student, upon request, with a copy of the education records which have been transferred; and

(3) Provide the parent or the student or the eligible student, upon request, with an opportunity for a hearing under Subpart C of this part.

(b) If a student is enrolled in more than one school, or receives services from more than one school, the schools may disclose information from the education records of the student to each other without obtaining the written consent of the parent of the student or the eligible student; *Provided*, That the disclosure meets the requirements of paragraph (a) of this section.

[20 U.S.C. 1232g(b)(1)(B)]

§ 99.35 Disclosure to certain Federal and State officials for Federal program purposes.

(a) Nothing in section 438 of the Act or this part shall preclude authorized representatives of officials listed in § 99.31(a)(3) from having access to student and other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of or compliance with the Federal legal requirements which relate to these programs.

(b) Except when the consent of the parent of a student or an eligible student has been obtained under § 99.30, or when the collection of personally identifiable information is specifically authorized by Federal law, any data collected by officials listed in § 99.31(a)(3) shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, or enforcement of or compliance with Federal legal requirements.

[20 U.S.C. 1232g(b)(3)]

§ 99.36 Conditions for disclosure in health and safety emergencies.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student to appropriate parties in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals.

(b) The factors to be taken into account in determining whether personally identifiable information from the education records of a student may be disclosed under this section shall include the following:

(1) The seriousness of the threat to the health or safety of the student or other individuals;

(2) The need for the information to meet the emergency;

(3) Whether the parties to whom the information is disclosed are in a position to deal with the emergency; and

(4) The extent to which time is of the essence in dealing with the emergency.

(c) Paragraph (a) of this section shall be strictly construed.

[20 U.S.C. 1232g(b)(1)(I)]

§ 99.37 Conditions for disclosure of directory information.

(a) An educational agency or institution may disclose personally identifiable information from the education records of a student who is in attendance at the institution or agency if that information has been designated as directory information (as defined in § 99.3) under paragraph (c) of this section.

(b) An educational agency or institution may disclose directory information from the education records of an individual who is no longer in attendance at the agency or institution without following the procedures under paragraph (c) of this section.

(c) An educational agency or institution which wishes to designate directory information shall give public notice of the following:

(1) The categories of personally identifiable information which the institution has designated as directory information;

(2) The right of the parent of the student or the eligible student to refuse to permit the designation of any or all of the categories of personally identifiable information with respect to that student as directory information; and

(3) The period of time within which the parent of the student or the eligible student must inform the agency or institution in writing that such personally identifiable information is not to be designated as directory information with respect to that student.

[20 U.S.C. 1232g(a)(5)(A) and (B)]

Subpart E—Enforcement

§ 99.60 Office and review board.

(a) The Secretary is required to establish or designate an office and a review board under section 438(g) of the Act. The office will investigate, process, and review violations, and complaints which may be filed concerning alleged violations of the provisions of section 438 of the Act and the regulations in this part. The review board will adjudicate cases referred to it by the office under the procedures set forth in §§ 99.65–99.67.

(b) The following is the address of the office which has been designated under paragraph (a) of this section: The Family Educational Rights and Privacy Act Office (FERPA), Department of Health, Education, and Welfare, 330 Independence Ave. SW., Washington, D.C. 20201.

(20 U.S.C. 1232g(g))

§ 99.61 Conflict with State or local law.

An educational agency or institution which determines that it cannot comply with the requirements of section 438 of the Act or of this part because a State or local law conflicts with the provisions of section 438 of the Act or the regulations in this part shall so advise the office designated under § 99.60(b) within 45 days of any such determination, giving the text and legal citation of the conflicting law.

(20 U.S.C. 1232g(f))

§ 99.62 Reports and records.

Each educational agency or institution shall (a) submit reports in the form and containing such information as the Office of the Review Board may require to carry out their functions under this part, and (b) keep the records and afford access thereto as the Office or the Review Board may find necessary to assure the correctness of those reports and compliance with the provisions of sections 438 of the Act and this part.

(20 U.S.C. 1232g(f) and (g))

§ 99.63 Complaint procedure.

(a) Complaints regarding violations of rights accorded parents and eligible students by section 438 of the Act or the regulations in this part shall be submitted to the Office in writing.

(b)(1) The Office will notify each complainant and the educational agency or institution against which the violation has been alleged, in writing, that the complaint has been received.

(2) The notification to the agency or institution under paragraph (b)(1) of this section shall include the substance of the alleged violation and the agency or institution shall be given an opportunity to submit a written response.

(c)(1) The Office will investigate all timely complaints received to determine whether there has been a failure to comply with the provisions of section 438 of the Act or the regulations in this part, and may permit further written or oral submissions by both parties.

(2) Following its investigation the Office will provide written notification of its findings and the basis for such findings, to the complainant and the agency or institution involved.

(3) If the Office finds that there has been a failure to comply, it will include in its notification under paragraph (c)(2) of this section, the specific steps which must be taken by the agency or educational institution to bring the agency or institution into compliance. The notification shall also set forth a reasonable period of time, given all of the circumstances of the case, for the agency or institution to voluntarily comply.

(d) If the educational agency or institution does not come into compliance within the period of time set under paragraph (c)(3) of this section, the matter will be referred to the Review Board for a hearing under §§ 99.64–99.67, inclusive.

(20 U.S.C. 1232g(f))

§ 99.64 Termination of funding.

If the Secretary, after reasonable notice and opportunity for a hearing by the Review Board, (1) finds that an educational agency or institution has failed to comply with the provisions of section 438 of the Act, or the regulations in this part, and (2) determines that compliance cannot be secured by voluntary means, he shall issue a decision, in writing, that no funds under any of the Federal programs referenced in § 99.1(a) shall be made available to that educational agency or institution (or, at the Secretary's discretion, to the unit of the educational agency or institution affected by the failure to comply) until there is no longer any such failure to comply.

(20 U.S.C. 1232g(f))

§ 99.65 Hearing procedures.

(a) *Panels.* The Chairman of the Review Board shall designate Hearing Panels to conduct one or more hearings under § 99.64. Each Panel shall consist of not less than three members of the Review Board. The Review Board may, at its discretion, sit for any hearing or class of hearings. The Chairman of the Review Board shall designate himself or any other member of a Panel to serve as Chairman.

(b) *Procedural rules.* (1) With respect to hearings involving, in the opinion of the Panel, no dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall take appropriate steps to afford to each party to the proceeding an opportunity for presenting his case at the option of the Panel (i) in whole or in part in writing or (ii) in an informal conference before the Panel which shall afford each party: (A) Sufficient notice of the issues to be considered (where such notice has not previously been afforded); and (B) an opportunity to be represented by counsel.

(2) With respect to hearings involving a dispute as to a material fact the resolution of which would be materially assisted by oral testimony, the Panel shall afford each party an opportunity, which shall include, in addition to provisions required by subparagraph (1)(ii) of this paragraph, provisions designed to assure to each party the following:

(i) An opportunity for a record of the proceedings;

(ii) An opportunity to present witnesses on the party's behalf; and

(iii) An opportunity to cross-examine other witnesses either orally or through written interrogatories.

(20 U.S.C. 1232g(g))

§ 99.66 Hearing before Panel or a Hearing Officer.

A hearing pursuant to § 99.65(b)(2) shall be conducted, as determined by the Panel Chairman, either before the Panel or a hearing officer. The hearing officer may be (a) one of the members of the Panel or (b) a nonmember who is appointed as a hearing examiner under 5 U.S.C. 3105.

(20 U.S.C. 1232g(g))

§ 99.67 Initial decision; final decision.

(a) The Panel shall prepare an initial written decision, which shall include findings of fact and conclusions based thereon. When a hearing is conducted before a hearing officer alone, the hearing officer shall separately find and state the facts and conclusions which shall be incorporated in the initial decision prepared by the Panel.

(b) Copies of the initial decision shall be mailed promptly by the Panel to each party (or to the party's counsel), and to the Secretary with a notice affording the party an opportunity to submit written comments thereon to the Secretary within a specified reasonable time.

(c) The initial decision of the Panel transmitted to the Secretary shall become the final decision of the Secretary, unless, within 25 days after the expiration of the time for receipt of written comments, the Secretary advises the Review Board in writing of his determination to review the decision.

(d) In any case in which the Secretary modifies or reverses the initial decision of the Panel, he shall accompany that action with a written statement of the grounds for the modification or reversal, which shall promptly be filed with the Review Board.

(e) Review of any initial decision by the Secretary shall be based upon the decision, the written record, if any, of the Panel's proceedings, and written comments or oral arguments by the parties, or by their counsel, to the proceedings.

(f) No decision under this section shall become final until it is served upon the educational agency or institution involved or its attorney.

(20 U.S.C. 1232g(g))

[FR Doc.76-17309 Filed 6-16-76;8:45 am]

FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT OF 1974, AS AMENDED

Sec. 438. (a) (1) (A) No funds shall be made available under any applicable program to any educational agency or institution which has a policy of denying, or which effectively prevents, the parents of students who are or have been in attendance at a school of such agency or at such institution, as the case may be, the right to inspect and review the education records of their children. If any material or document in the education record of a student includes information on more than one student, the parents of one of such students shall have the right to inspect and review only such part of such material or document as relates to such student or to be informed of the specific information contained in such part of such material. Each educational agency or institution shall establish appropriate procedures for the granting of a request by parents for access to the education records of their children within a reasonable period of time, but in no case more than forty-five days after the request has been made.

(B) The first sentence of subparagraph (A) shall not operate to make available to students in institutions of postsecondary education the following materials:

(i) financial records of the parents of the student or any information contained therein;

(ii) confidential letters and statements of recommendation, which were placed in the education records prior to January 1, 1975, if such letters or statements are not used for purposes other than those for which they were specifically intended;

(iii) if the student has signed a waiver of the student's right of access under this subsection in accordance with subparagraph (C), confidential recommendations—

(I) respecting admission to any educational agency or institution,

(II) respecting an application for employment, and

(III) respecting the receipt of an honor or honorary recognition.

(C) A student or a person applying for admission may waive his right of access to confidential statements described in clause (iii) of subparagraph (B), except that such waiver shall apply to recommendations only if (i) the student is, upon request, notified of the names of all persons making confidential recommendations and (ii) such recommendations are used solely for the purpose for which they were specifically intended. Such waivers may not be recurred [sic] as a condition for admission to, receipt of financial aid from, or receipt of any other services or benefits from such agency or institution.

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which—

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution, or by a person acting for such agency or institution.

(B) The term "education records" does not include—

(i) records of institutional, supervisory, and administrative personnel and educational personnel ancillary thereto which are in the sole possession of the maker thereof and which are not accessible or revealed to any other person except a substitute;

(ii) if the personnel of a law enforcement unit do not have access to education records under subsection (b)(1), the records and documents of such law enforcement unit which (I) are kept apart from records described in subparagraph (A), (II) are maintained solely for law enforcement purposes, and (III) are not made available to persons other than law enforcement officials of the same jurisdiction;

(iii) in the case of persons who are employed by an educational agency or institution but who are not in attendance at such agency or institution, records made and maintained in the normal course of business which relate exclusively to such person in that person's capacity as an employee and are not available for use for any other purpose; or

(iv) records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, which are created or maintained by a physician, psychiatrist, psychologist, or other recognized professional or para-professional acting in his professional or para-professional capacity, or assisting in that capacity, and which are created, maintained, or used only in connection with the provision of treatment to the student, and are not available to anyone other than persons providing such treatment; provided, however, that such records can be personally reviewed by a physician or other appropriate professional of the student's choice.

(5) (A) For the purposes of this section the term "directory information" relating to a student includes the following: the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

(B) Any educational agency or institution making public directory information shall give public notice of the categories of information which it has designated as such information with respect to each student attending the institution or agency and shall allow a reasonable period of time after such notice has been given for a parent to inform the institution or agency that any or all of the information designated should not be released without the parent's prior consent.

(6) For the purposes of this section, the term "student" includes any person with respect to whom an educational agency or institution maintains education records or personally identifiable information, but does not include a person who has not been in attendance at such agency or institution.

(b) (1) No funds shall be made available under any applicable program to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information, as defined in paragraph (5) of subsection (a)) of students without the written consent of their parents to any individual, agency, or organization, other than to the following—

(A) other school officials, including teachers within the educational institution or local educational agency who have been determined by such agency or institution to have legitimate educational interests;

(B) officials of other schools or school systems in which the student seeks or, intends to enroll, upon condition that the student's parents be notified of the transfer, receive a copy of the record if desired, and have an opportunity for a hearing to challenge the content of the record;

(C) authorized representatives of (i) the Comptroller General of the United States, (ii) the Secretary, (iii) an administrative head of an education agency (as defined in section 408(c) of this Act), or (iv) State educational authorities, under the conditions set forth in paragraph (3) of this subsection; and

(D) in connection with a student's applications for, or receipt of, financial aid;

(E) State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974;

(F) organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted;

(G) accrediting organizations in order to carry out their accrediting functions;

(H) parents of a dependent student of such parents, as defined in section 152 of the Internal Revenue Code of 1954; and

(I) subject to regulations of the Secretary in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.

(2) No funds shall be made available under any applicable program to any education agency or institution which has a policy or practice of releasing, or providing access to, any personally identifiable information in education records other than directory information, or as is permitted under paragraph (1) of this subsection unless—

(A) there is written consent from the student's parents specifying records to be released, the reasons for such release, and to whom, and with a copy of the records to be released to the student's parents and the student if desired by the parents, or

(B) such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas in advance of the compliance therewith by the educational institution or agency.

(3) Nothing contained in this section shall preclude authorized representatives of (A) the Comptroller General of the United States, (B) the Secretary, (C) an administrative head of an eduction agency or (D) State educational authorities from having access to student or other records which may be necessary in connection with the audit and evaluation of Federally supported education programs, or in connection with the enforcement of the Federal legal requirements which relate to such programs: *Provided*, That except when collection of personally identifiable information is specifically authorized by Federal law, any data collected by such officials shall be protected in a manner which will not permit the personal identification of students and their parents by other than those officials, and such personally identifiable data shall be destroyed when no longer needed for such audit, evaluation, and enforcement of Federal legal requirements.

(4) (A) Each educational agency or institution shall maintain a record, kept with the education records of each student, which will indicate all individuals (other than those specified in paragraph (1)(A) of this subsection), agencies, or organizations which have requested or obtained access to a student's education records maintained by such educational agency or institution, and which will indicate specifically the legitimate interest that each such person, agency, or organization has in obtaining this information. Such record of access shall be available only to parents, to the school official and his assistants who are responsible for the custody of such records, and to persons or organizations authorized in, and under the conditions of, clauses (A) and (C) of paragraph (1) as a means of auditing the operation of the system.

(B) With respect to this subsection, personal information shall only be transferred to a third party on the condition that such party will not permit any other party to have access to such information without the written consent of the parents of the student.

(c) The Secretary shall adopt appropriate regulations to protect the rights of privacy of students and their families in connection with any surveys or data-gathering activities conducted, assisted, or authorized by the Secretary or an administrative head of an education agency. Regulations established under this subsection shall include provisions controlling the use, dissemination, and protection of such data. No survey or data-gathering activities shall be conducted by the Secretary, or an administrative head of an education agency under an applicable program, unless such activities are authorized by law.

(d) For the purposes of this section, whenever a student has attained eighteen years of age, or is attending an institution of postsecondary education the permission or consent required of and the rights accorded to the parents of the student shall thereafter only be required of and accorded to the student.

(e) No funds shall be made available under any applicable program to any educational agency or institution unless such agency or institution informs the parents of students, or the students, if they are eighteen years of age or older, or are attending an institution of postsecondary education, of the rights accorded them by this section.

(f) The Secretary, or an administrative head of an education agency, shall take appropriate actions to enforce provisions of this section and to deal with violations of this section, according to the provisions of this Act, except that action to terminate assistance may be taken only if the Secretary finds there has been a failure to comply with the provisions of this section, and he has determined that compliance cannot be secured by voluntary means.

(g) The Secretary shall establish or designate an office and review board within the Department of Health, Education, and Welfare for the purpose of investigating, processing, reviewing, and adjudicating violations of the provisions of this section and complaints which may be filed concerning alleged violations of this section. Except for the conduct of hearings, none of the functions of the Secretary under this section shall be carried out in any of the regional offices of such Department.